

Message Text

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3TFW CLARK AB RP/CC/OI
3CSG CLARK AB RP/CC/JAI
PHAX CLARK AB RP/EA

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E.O. 11652: N/A

TAGS: MARR, RP

SUBJECT: FOREIGN CIVIL LITIGATION CASES AGAINST MILITARY
EXCHANGES

REF: 3 CSG CLARK AB RP/JAI 210010Z AUG 78

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1. AS A RESULT OF TWO RECENT CASES AGAINST BASE EXCHANGES,
EMBASSY IS REQUESTED TO DELIVER THE FOLLOWING NOTE TO MINI-
STRY OF FOREIGN AFFAIRS:
2. BEGIN QUOTE: (COMPLIMENTARY OPENING) IN TWO RECENT
CASES INSTITUTED IN PHILIPPINE COURTS AGAINST BASE EXCHANGES
OF THE UNITED STATES AIR FORCE, THE COURTS HAVE RULED THAT

THE EXCHANGES ARE NOT INSTRUMENTALITIES OF THE UNITED STATES GOVERNMENT. THE JUSTIFICATION ADVANCED FOR THESE RULINGS IS THAT THE BASE EXCHANGES ENGAGE IN "COMMERCIAL ACTIVITIES". IN CONSEQUENCE, THE COURTS HAVE DECLINED TO ORDER THAT SERVICE OF PROCESS BE MADE IN COMPLIANCE WITH DEPARTMENT OF JUSTICE CIRCULAR NO. 47, DATED AUGUST 5, 1970, IN SPITE OF ASSERTIONS BY U.S. MILITARY AUTHORITIES THAT THE EXCHANGES ARE INSTRUMENTALITIES OF THE UNITED STATES GOVERNMENT. THESE CASES ARE:

A. ROMUALDO T. VALENCIA V. PHIL-GUAM REGIONAL EXCHANGE, ET

AL., COURT OF FIRST INSTANCE OF PAMPANGA AND ANGELES CITY, FIFTH JUDICIAL CIRCUIT, BRANCH IV, CIVIL CASE NO. 2638.

B. RAMON S. YAP V. PHILIPPINE AREA EXCHANGE, CITY COURT OF ANGELES CITY, BRANCH I, CIVIL CASE NO. 78-208.

3. ARTICLE XVIII OF THE MILITARY BASES AGREEMENT OF MARCH 14, 1947, EXPRESSLY RECOGNIZES THAT EXCHANGES ARE AGENCIES OF THE UNITED STATES ENTITLED TO OPERATE ON BASES IN THE PHILIPPINES, AND DISTINGUISHES THEM FROM COMMERCIAL ENTERPRISES WHICH ARE PERMITTED ON THE BASES IN CERTAIN CIRCUMSTANCES. FURTHERMORE, UNDER THE LAWS OF THE UNITED STATES, MILITARY BASE EXCHANGES ARE CLEARLY AGENCIES AND INSTRUMENTALITIES OF THE UNITED STATES. (SEE STANDARD OIL CO. LIMITED OFFICIAL USE

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V. JOHNSON, 316 U.S. 481 (1947).) EVEN IF IT WERE ESTABLISHED THAT SOME OF THE ACTIVITIES PERFORMED BY POST EXCHANGES ARE COMMERCIAL IN NATURE, IT WOULD NOT DEPRIVE THEM OF THEIR STATUS AS AGENCIES AND INSTRUMENTALITIES OF THE UNITED STATES -- CONTRARY TO THE HOLDINGS OF THE COURTS IN THE AFOREMENTIONED CASES. UNDER MODERN CONCEPTS OF SOVEREIGN IMMUNITY, THE CHARACTERIZATION OF AN ACT PERFORMED BY A FOREIGN GOVERNMENTAL AGENCY AS "COMMERCIAL" (JURE GESTIONIS) OR "GOVERNMENTAL" (JURE IMPERII) IS RELEVANT TO THE ISSUE OF WHETHER MUNICIPAL COURTS CAN EXERCISE JURISDICTION OVER SUCH AGENCY; IT IS IRRELEVANT TO THE ISSUE OF THE JURISTIC STATUS OF THE FOREIGN GOVERNMENTAL AGENCY, AND TO THE MANNER IN WHICH SUCH AGENCY IS TO BE SERVED WITH LEGAL PROCESS.

4. THE EMBASSY HAS BEEN INSTRUCTED TO REQUEST THAT THE MFA TAKE APPROPRIATE MEASURES TO INSURE THAT PHILIPPINE JUDICIAL AUTHORITIES GENERALLY ARE AWARE THAT EXCHANGES AND OTHER SIMILAR FACILITIES SPECIFIED IN ARTICLE XVIII OF THE MBA ARE AGENCIES OF THE UNITED STATES, AND THAT SERVICE OF LEGAL PROCESS ON SUCH AGENCIES MUST BE MADE IN THE MANNER PRESCRIBED BY THE DEPARTMENT OF JUSTICE CIRCULAR

NO. 47. THE EMBASSY HAS BEEN FURTHER INSTRUCTED TO REQUEST THAT THE MFA INFORM THE COURTS IN WHICH THE TWO ABOVE-REFERENCED LAWSUITS HAVE BEEN INSTITUTED THAT THE PHILIP- GUAM REGIONAL EXCHANGE AND THE PHILIPPINE AREA EXCHANGE, RESPECTIVELY, ARE AGENCIES AND INSTRUMENTALITIES OF THE UNITED STATES, AND THAT SERVICE OF LEGAL PROCESS UPON THEM MUST BE EFFECTED IN COMPLIANCE WITH DEPARTMENT OF JUSTICE CIRCULAR NO. 47. (COMPLIMENTARY CLOSING) END QUOTE.

5. FOR 3 CSG JAI: PLEASE INCLUDE SECSTATE WASHDC AS INFO ADDRESSEE ON FUTURE MESSAGES DEALING WITH THIS SUBJECT. CHRISTOPHER

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